

**EXAMINER'S AMENDMENT**

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.
2. Authorization for this examiner's amendment was given in a telephone interview with Barbara E. Johnson on 12/13/2010.
3. SEQ ID NO:5 and 7 are withdrawn from examination, and the recitation of SEQ ID NO:5 and 7 are canceled without prejudice.

4. IN THE CLAIMS:

--26. (Currently amended) A method for modifying the growth characteristics of a plant, comprising the steps of:

(a) transforming plant cells from a plant with a genetic construct ~~which comprises~~ comprising a seedyl nucleic acid sequence operably linked to a promoter, wherein the nucleic acid sequence ~~which encodes a seedyl protein and which seedyl nucleic acid sequence further contains~~ comprising the individual sequences in the following order from N-terminus to C-terminus: (i) the sequence according to SEQ ID NO 35; (ii) the sequence according to SEQ ID NO 16; ~~and~~ (iii) the sequence according to SEQ ID NO 36 and (iv) the sequence according to SEQ ID NO 37, wherein the seedyl nucleic acid ~~further~~ consists essentially of a sequence having 90% sequence identity to ~~a sequence selected from the group consisting of SEQ ID NOs 1, 5, and 7~~ SEQ ID NO:1;

(b) expressing said seedyl nucleic acid sequence in said transformed plant cells;  
(c) regenerating transgenic plants from said transformed plant cells; and  
(d) identifying a transgenic plant having a modified growth characteristic, wherein the growth characteristic is selected from the group consisting of: from said transgenic plants which exhibits an increase in any or all of above-ground area, an increase in number of first panicles, an increase in total seed weight per plant and ~~or an increase in the~~ number of filled seeds per plant compared to non-transformed plants.

27. (Currently amended) ~~Method~~ The method according to claim 26, wherein said seedyl nucleic acid sequence is of dicotyledonous plant origin from the family ~~selected from the group consisting of Solanaceae and Nicotiana.~~

28. (Currently amended) ~~Method~~ The method according to claim 27, wherein said promoter ~~seedyl nucleic acid is operably linked to a~~ is a seed-preferred promoter.

29. (Currently amended) ~~Method~~ The method according to claim 28, wherein said seed-preferred promoter is a prolamin promoter.--

--31. (Currently amended) A genetic construct comprising: (i) (a) A a seedyl nucleic acid sequence encoding a seedyl protein and comprising a seedyl nucleic acid containing comprising the individual sequences in the following order from N-terminus to C-terminus: (i) the sequence according to SEQ ID NO 35; the sequence according to SEQ ID NO 16; and (iii) the sequence according to SEQ ID NO 36 and (iv) the sequence according to SEQ ID NO 37, wherein the seedyl nucleic acid further consists essentially of a sequence having 90% sequence identity to a sequence selected from the group consisting of SEQ ID NOs 1, 5, and 7 SEQ ID NO:1; (ii)(b) one or more tissue preferred control sequences capable of regulating expression of the nucleic

acid sequence of (i) (a); and optionally (ii) (c) a transcription termination sequence, wherein a plant transformed with said construct exhibits an increase in any or all of above-ground area, number of first panicles, number of filled seeds or an increase in total seed weight per plant compared to a non-transformed plant.

32. (Currently amended) ~~Construct~~ The construct according to claim 31, wherein said control sequence is a seed-specific promoter.

33. (Currently amended) A plant or plant cell transformed with ~~a~~ the construct according to claim 31.

34. (Currently amended) ~~Transgenic~~ The plant or plant cell according to claim ~~30~~ 33, wherein said plant is a monocotyledonous plant such as sugar cane, or wherein the plant is a crop plant such as soybean, sunflower, canola, alfalfa, rapeseed, cotton, tomato, potato or tobacco, or wherein the plant is a cereal, such as rice, maize, wheat, barley, millet, rye, sorghum or oats.

35. (Currently amended) Harvestable parts of a plant according to claim ~~30~~ 33, wherein said harvestable parts are seeds and wherein the seeds comprise said genetic construct.--

#### **Reasons for Allowance**

5. The following is an examiner's statement of reasons for allowance: Claims 26-30 are deemed free of the prior art, given the failure of the prior art to teach or reasonably suggest a method for modifying the growth characteristics of a plant comprising transforming a plant with a genetic construct comprising a *seedy1* nucleic acid sequence encoding a *seedy1* protein comprising SEQ ID NO:35, 16, 36 and 37, wherein the *seedy1* nucleic acid sequence consists essentially of a sequence having 90% sequence identity to SEQ ID NO:1 and selecting a plant

having an increase in any or all of above-ground area, an increase in number of first panicles, an increase in total seed weight per plant or an increase in the number of filled seeds per plant compared to non-transformed plants. Claims 31-35 are deemed free of the prior art, given the failure of the prior art to teach or reasonably suggest a genetic construct comprising a *seedy1* nucleic acid sequence encoding a *seedy1* protein comprising SEQ ID NO:35, 16, 36 and 37, wherein the *seedy1* nucleic acid sequence consists essentially of a sequence having 90% sequence identity to SEQ ID NO:1 and wherein the *seedy1* nucleic acid sequence is operably linked to a tissue preferred promoter and wherein a plant transformed with said construct exhibits an increase in any or all of above-ground area, an increase in number of first panicles, an increase in total seed weight per plant or an increase in the number of filled seeds per plant compared to non-transformed plants.

Support for “tissue-preferred” promoter in the Examiner’s amendment to claim 31 can be found, for example, on pages 18-19.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled “Comments on Statement of Reasons for Allowance.”

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stuart F. Baum whose telephone number is 571-272-0792. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anne Marie Grunberg can be reached at 571-272-0975. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-1600.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Stuart F. Baum/  
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